



another she turned to go between two pallets, felt a little twist in her knee and then felt pain.

The surface she was walking on was concrete. There is no evidence that the surface was uneven or that she tripped. Claimant neither alleges that a trauma precipitated her onset of symptoms, nor does she allege a series of traumas. The only “accident” alleged was the act of turning or changing direction while walking.

For a claim to be compensable, claimant must establish personal injury by accident arising out of and in the course of employment. K.S.A. 44-501(a). For a claim to arise “out of” employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995); Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984). The facts presented do not lend themselves to such a finding.

It is not always necessary for an injury to be caused by trauma or some form of physical force before it can be found compensable. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). However, when an injury is attributable to a personal condition of the employee and no other factors contribute to the injury, the injury is not compensable. Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992); Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

In 1993 the Kansas Legislature amended K.S.A. 44-508(e) to provide:

“An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.” K.S.A. 1996 Supp. 44-508(e).

In workers compensation proceedings the claimant bears the burden of proof to establish her claim. “Burden of proof” is defined in K.S.A. 1996 Supp. 44-508(g) as:

“[T]he burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”

The burden of proof is “on the claimant to establish the claimant’s right to an award of compensation and to prove the various conditions on which the claimant’s right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.” K.S.A. 1996 Supp. 44-501(a).

The facts and circumstances surrounding claimant’s injury do not remove it from “the normal activities of day-to-day living.” Therefore, based upon the record as it currently

exists, the Appeals Board finds claimant has not met her burden of proving that she sustained personal injury by accident arising out of her employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the January 15, 1997, preliminary hearing Order of Bruce E. Moore should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1997.

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BOARD MEMBER

c:     Joni J. Franklin, Wichita, KS  
       Kenneth J. Hursh, Overland Park, KS  
       Bruce E. Moore, Administrative Law Judge  
       Philip S. Harness, Director